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R.N., Appellant)	
)	
and)	Docket No. 20-1601
)	Issued: April 7, 2021
U.S. POSTAL SERVICE, BOSTON)	
PROCESSING & DISTRIBUTION CENTER,)	
Boston, MA, Employer)	
)	

Case Submitted on the Record

Before:
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

On September 8, 2020 appellant filed a timely appeal from a July 22, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated October 19, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 3, 2018 appellant, then a 61-year-old electronic technician, filed a traumatic injury claim (Form CA-1) alleging that on August 25, 2018 he felt a twinge and a burning sensation in his right elbow pulling a belt over rollers on a machine while in the performance of duty. He stopped work on August 26, 2018.

In an authorization for examination and/or treatment (Form CA-16) dated September 4, 2018, Dr. Guido Guidotti, who specializes in occupational medicine, diagnosed a right elbow sprain. He checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity of appellant pulling on the belt of a heavy machine. In an attending physician's report (Form CA-20) of even date, Dr. Guidotti diagnosed right elbow sprain, checked a box marked "Yes" indicating that the condition was caused or aggravated by employment, and found that he was unable to work. In a duty status report (Form CA-7) of even date, he found that appellant was totally disabled.³

An August 26, 2018 x-ray of appellant's right elbow interpreted by Dr. David Pace, a Board-certified radiologist, included findings of an elbow joint effusion, a possible loose body, and degenerative changes associated with a history of a previous fracture and surgery along the radial head/neck.

On August 29, 2018 Dr. Kai Mithoefer, a Board-certified orthopedic surgeon, discussed appellant's complaints of right arm pain and swelling after an injury at work on August 25, 2018. He noted that he had a history of a prior elbow injury in his youth treated by surgery. Dr. Mithoefer diagnosed a right elbow injury with effusion. He reviewed x-rays and advised, "While degenerative changes noted were baseline, there is clearly a new injury."

In a development letter dated September 10, 2018, OWCP requested that appellant submit additional factual and medical information in support of his claim, including a detailed report from his attending physician explaining how the identified employment incident caused or aggravated a diagnosed condition. It afforded him 30 days to provide the requested information.

Thereafter, OWCP received a September 4, 2018 narrative report from Dr. Guidotti, who provided the history of the August 25, 2018 employment incident. Dr. Guidotti diagnosed a partial thickness tear of the extensor carpi radialis brevis tendon, tendinopathy of the common extensor tendon from the lateral epicondyle, a radial collateral ligament tear, a partial thickness distal medial ulnar collateral ligament tear, and secondary osteoarthritis of the right elbow. He attributed the diagnoses to appellant's pulling the belt over rollers on a machine, noting that this "placed an

² Docket No. 19-1372 (issued June 22, 2020).

³ On August 26, 2018 a physician assistant evaluated appellant for right elbow pain and swelling that had occurred after he stretched a heavy belt on a machine at work.

excessive load on his tendon, causing a tear and aggravating his tendinopathy, ligament tears, and osteoarthritis.”

A September 12, 2018 magnetic resonance imaging (MRI) scan of the right elbow revealed a small joint effusion, diffuse synovitis, severe osteoarthritis, severe tendinopathy of the right common extensor tendon, a chronic radial collateral ligament tear, and a partial-thickness right medial ulnar collateral ligament tear.

By decision dated October 19, 2018, OWCP denied appellant’s traumatic injury claim. It found that the medical evidence of record was insufficient to establish a diagnosed condition causally related to the accepted August 25, 2018 employment incident.

On October 29, 2018 appellant requested reconsideration. He resubmitted a September 18, 2018 statement describing the occurrence of the August 25, 2018 employment incident.

By decision dated November 6, 2018, OWCP denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

OWCP subsequently received Form CA-17 reports dated October 30 and November 13, 2018 from Dr. Guidotti, who diagnosed right elbow sprain and found that appellant was unable to work. In Form CA-20 reports dated October 30 and November 27, 2018, Dr. Guidotti diagnosed right elbow strain and checked a box marked “Yes” indicating that the condition was caused or aggravated by an employment activity as it had “occurred at work.”

On January 8, 2019 appellant again requested reconsideration. In an accompanying letter dated January 2, 2019, he advised that he had attached pictures and treatment notes from his episode of gout in his right foot prior to the August 25, 2018 employment incident. Appellant asserted that his absence prior to his injury date was due to his gout rather than an elbow injury as claimed by the employing establishment.

With the request for reconsideration, appellant submitted a January 2, 2019 supplemental factual statement and resubmitted his September 18, 2018 statement, a copy of the August 25, 2018 letter of warning issued by the employing establishment, his grievance appeal form, an October 26, 2018 settlement agreement regarding an Equal Employment Opportunity complaint, an unsigned urgent care summary report dated August 14, 2018, Dr. Guidotti’s September 4, 2018 report, and the September 12, 2018 MRI scan of his right elbow.

By decision dated March 21, 2019, OWCP denied appellant’s request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant appealed to the Board. By decision dated June 22, 2020, the Board affirmed the March 21, 2019 decision.⁴

⁴ *Supra* note 2.

Thereafter, appellant submitted a report from Dr. Guidotti responding to the Board's June 22, 2020 decision.⁵ Dr. Guidotti opined that appellant had aggravated underlying elbow conditions at the time of his injury. He related, "The strain [appellant] placed on his elbow tendons from pulling the belt over the rollers aggravated tendon tears and tendinopathy resulting in an inflammatory process and swelling leading to decreased range of motion and pain. Similarly, this action, through a frictional process, aggravated his elbow arthritis resulting in inflammation and swelling leading to decreased range of motion and pain." Dr. Guidotti noted that appellant had a history of a prior elbow fracture that had healed. Appellant attributed his elbow condition to his August 25, 2018 employment injury.

On July 6, 2020 appellant requested reconsideration.

By decision dated July 22, 2020, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

LEGAL PRECEDENT

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.⁶ This discretionary authority, however, is subject to certain restrictions. For instance, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.⁷ Timeliness is determined by the document receipt date (*i.e.*, the "received date" in OWCP's Integrated Federal Employees' Compensation System (iFECS)).⁸ Imposition of this one-year filing limitation does not constitute an abuse of discretion.⁹

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the request demonstrates clear evidence that OWCP's most recent merit decision was in error.¹⁰ OWCP's procedures provide that it will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates "clear evidence of error" on the part of

⁵ Dr. Guidotti indicated that the report was dated March 3, 2020; however, this appears to be a typographical error as he referenced the Board's June 22, 2020 decision.

⁶ 5 U.S.C. § 8128(a); *L.W.*, Docket No. 18-1475 (issued February 7, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

⁷ 20 C.F.R. § 10.607(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

⁹ *G.G.*, Docket No. 18-1072 (issued January 7, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

¹⁰ See 20 C.F.R. § 10.607(b); *M.H.*, Docket No. 18-0623 (issued October 4, 2018); *Charles J. Prudencio*, 41 ECAB 499 (1990).

OWCP.¹¹ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹²

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.¹³ The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error. It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To demonstrate clear evidence of error, the evidence submitted must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹⁴

OWCP's procedures note that the term clear evidence of error is intended to represent a difficult standard. The claimant must present evidence which on its face demonstrates that OWCP made an error (for example, proof that a schedule award was miscalculated). Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.¹⁵ The Board makes an independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP.¹⁶

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

As noted above, a request for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.¹⁷ As appellant's request for reconsideration was not received until July 6, 2020, more than one year after the issuance of OWCP's last merit

¹¹ *L.C.*, Docket No. 18-1407 (issued February 14, 2019); *M.L.*, Docket No. 09-0956 (issued April 15, 2010). See also 20 C.F.R. § 10.607(b); *supra* note 8 at Chapter 2.1602.5 (February 2016).

¹² *J.M.*, Docket No. 19-1842 (issued April 23, 2020); *Robert G. Burns*, 57 ECAB 657 (2006).

¹³ *S.C.*, Docket No. 18-0126 (issued May 14, 2016); *supra* note 8 at Chapter 2.1602.5(a) (February 2016).

¹⁴ *C.M.*, Docket No. 19-1211 (issued August 5, 2020).

¹⁵ *J.S.*, Docket No. 16-1240 (issued December 1, 2016); *supra* note 8 at Chapter 2.1602.5(a) (February 2016).

¹⁶ *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

¹⁷ 20 C.F.R. § 10.607(a).

decision dated October 19, 2018, it was untimely filed. Consequently, he must demonstrate clear evidence of error by OWCP in its October 19, 2018 decision.¹⁸

In support of his request for reconsideration, appellant submitted a report from Dr. Guidotti. Dr. Guidotti opined that the August 25, 2018 employment injury had aggravated his underlying elbow conditions. He related that pulling the belt over rolls had strained the tendons of appellant's elbow aggravating tendon tears and tendinopathy and causing an inflammatory process. It had also aggravated appellant's elbow arthritis due to friction resulting in inflammation and swelling.

The Board finds that Dr. Guidotti's opinion is insufficient to demonstrate clear evidence of error by OWCP. As discussed, clear evidence of error is intended to represent a difficult standard.¹⁹ The claimant must present evidence which on its face shows that OWCP made an error. Evidence such as a detailed, well-rationalized medical report which, if submitted before the denial was issued, would have created a conflict in medical opinion requiring further development, is not clear evidence of error.²⁰ Dr. Guidotti's opinion fails to manifest on its face that OWCP committed an error in denying appellant's claim and is thus insufficient to demonstrate clear evidence of error by OWCP in finding that appellant had failed to establish a medical condition causally related to the accepted August 25, 2018 employment incident.

On appeal appellant contends that OWCP erred in its prior decision by failing to accept photographs as evidence he had injured his elbow. As noted, however, he has not provided evidence of sufficient probative value to raise a substantial question as to the correctness of OWCP's decision. Thus, appellant has not demonstrated clear evidence of error.²¹

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

¹⁸ 20 C.F.R. § 10.607(b); *S.M.*, Docket No. 16-0270 (issued April 26, 2016).

¹⁹ *A.A.*, Docket No. 19-1219 (issued December 10, 2019); *J.F.*, Docket No. 18-1802 (issued May 20, 2019); *J.D.*, Docket No. 16-1767 (issued January 12, 2017); *Dean D. Beets*, 43 ECAB 1153 (1992).

²⁰ *Id.*; see also *Leona N. Travis*, 43 ECAB 227 (1999).

²¹ See *M.B.*, Docket No. 17-1505 (issued January 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board